

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Zagel	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 3225	DATE	8/5/2002
CASE TITLE	JEAN HUMMELL vs. YELLOW FREIGHT SYSTEMS, INC.		

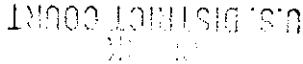
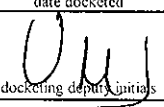

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m)   ☐ General Rule 21   ☐ FRCP41(a)(1)   ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry]   **Motion (4-1) to remand is granted. The case is remanded to the Circuit Court of Cook County, Law Division.**
- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	<div style="text-align: center;">               2002 AUG 13 21 00 PM           </div>	3 number of notices	Document Number
<input type="checkbox"/>	No notices required.		AUG 13 2002 date docketed	9
<input type="checkbox"/>	Notices mailed by judge's staff.		 docketing deputy's initials	
<input checked="" type="checkbox"/>	Docketing to mail notices.		AUG 13 2002 date mailed notice	
<input type="checkbox"/>	Mail AO 450 form.		 mailing deputy initials	
<input type="checkbox"/>	Copy to judge/magistrate judge.			
DW courtroom deputy's initials		Date/time received in central Clerk's Office		

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JEAN HUMMELL,

Plaintiff,

v.

YELLOW FREIGHT SYSTEMS, INC.,

Defendant.

No. 02 C 3225  
Judge James B. Zagel

DOJ

AUG 13 2002

**MEMORANDUM OPINION AND ORDER**

After plaintiff Jean Hummell settled a personal injury claim arising out of a car accident with defendant Yellow Freight Systems, Inc. for the sum of \$150,000, an issue remained as to a claim for reimbursement of the defendant/counter-plaintiff Administrative Committee of the Wal-Mart Stores, Inc. Associates' Health and Welfare Plan (the "Plan") for medical benefits the Plan previously paid in the amount of \$16,698.10.

The Plan contains a reimbursement/subrogation provision that requires Ms. Hummell to reimburse the Plan to the extent of medical benefits paid, when she makes a recovery from a responsible third party. At issue is a provision that states that there will be no reduction of the Plan's lien for attorney's fees and that Ms. Hummell must reimburse the Plan regardless of whether she was made whole by the third-party recovery. Ms. Hummell sought in state court to reduce the Plan's claim for reimbursement pursuant to the Illinois Common Fund Doctrine. The Plan removed the action to this Court and now Ms. Hummell seeks remand. Ms. Hummell argues that what remains of her claim is a straight-forward state claim based on the Illinois Common Fund Doctrine. The Plan opposes remand on the theory that Ms. Hummell's claim is

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completely preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 101 *et seq.* (“ERISA”).

Section 1441(c)<sup>1</sup> of Title 28 of the United States Code permits removal by a defendant from state court to federal court “[w]henever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise nonremovable claims or causes of action . . . .” 28 U.S.C. § 1441(c). Section 1331 of Title 28 of the United States Code confers federal question jurisdiction over cases that “arise under the Constitution, laws, or treaties of the United States.” Ordinarily, a court decides whether federal question jurisdiction exists by examining whether the plaintiff’s well-pleaded complaint contains issues of federal law. *Rice v. Panchal*, 65 F.3d 637, 639 (7th Cir. 1995) (citation omitted). A corollary to the well-pleaded complaint rule, however, is that Congress may so completely preempt a specific area that any complaint raising this group of claims is federal in character and creates federal question jurisdiction. *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64, 95 L. Ed. 2d 55, 107 S. Ct. 1542 (1987) (citation omitted).

The United States Supreme Court has found that Congress showed an intent to make causes of action within the scope of ERISA’s Section 502(a), 29 U.S.C. § 1132, civil enforcement provisions removable to federal court under the doctrine of complete preemption. *Id.* at 66. Three factors are examined to determine whether the doctrine of “complete preemption” applies: whether the plaintiff is eligible to bring a claim under that section, whether the plaintiff’s cause

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<sup>1</sup> Although it was unclear from its removal petition on what subsection of 28 U.S.C. §1441 the Plan relied, in its Response the Plan clarified that it sought removal pursuant to 28 U.S.C. §1441(c), an argument likely based in part on the fact that Ms. Hummell is correct that removal pursuant to subsection (b) would be explicitly foreclosed by the Seventh Circuit’s decisions in *Speciale v. Seybold*, 147 F.3d 612 (7<sup>th</sup> Cir. 1998) and *Blackburn v. Sundstrand Corp.*, 115 F.3d 493 (7<sup>th</sup> Cir. 1997).

of action falls within the scope of an ERISA provision that the plaintiff can enforce through Section 502(a) and whether the plaintiff's state law claim cannot be resolved without an interpretation of the contract governed by federal law. *Speciale v. Seybold*, 147 F.3d 612, 615 (7<sup>th</sup> Cir. 1998).

In evaluating whether the claim at issue falls within the ambit of ERISA's complete preemption doctrine, the Seventh Circuit and the Illinois Supreme Court have determined repeatedly that the claims arise under state law and do not require the interpretation of the contract governed by federal law. Accordingly, such claims are not preempted. *See, e.g., Speciale v. Seybold*, 147 F.3d 612, 615 (7<sup>th</sup> Cir. 1998) (finding that personal injury claim was not a cause of action that falls within the scope of an ERISA provision and state law claim requires resolution of an interpretation of the contract governed by federal law); *Blackburn v. Sundstrand Corp.*, 115 F.3d 493, 494-95 (7<sup>th</sup> Cir. 1997) (finding that the claim that the plaintiffs should be credited with attorneys' fees in connection with their duty to reimburse arises under state law because the action did not seek a payment from the ERISA plan).

The Seventh Circuit in *Blackburn*, on facts remarkably similar to those here, refers to the ERISA preemption doctrine as "misleadingly" called "complete." 115 F.3d at 495. The *Blackburn* court, although not specifically addressing removal pursuant to 28 U.S.C. 1441(c),<sup>2</sup> addressed the nature of the claim and found that a claim where, as here, the plaintiffs sought to be credited with the amount of attorneys' fees where plaintiffs had a duty to reimburse the defendant pursuant to an ERISA plan was a claim arising under state law. It is important to note

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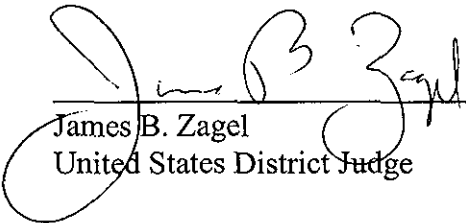
<sup>2</sup> The Plan reads the *Blackburn* decision more narrowly than I do, especially in light of the Illinois Supreme Court's decision in *Bishop v. Burgard*, 198 Ill. 2d 495 (2002).

that in *Blackburn*, as here, the plan at issue contained an attorney's fee provision, *id.* at 495, thus rendering less effective the Plan's argument that the attorneys' fee provision brings the claim more squarely into the realm of those claims that cannot be resolved without an interpretation of the contract governed by federal law.

The Illinois Supreme Court recently echoed the holding in *Blackburn* in another case with very similar facts, and where the Plan was a party. In *Bishop v. Burgard*, the Illinois Supreme Court found that a claim under the Common Fund Doctrine is based upon the attorney's rights and wholly unrelated to the ERISA plan. Again, preemption was inappropriate.

For the foregoing reasons, plaintiff's motion to remand [4-1] is GRANTED.

ENTER:

  
James B. Zagel  
United States District Judge

DATE: AUG 05 2002